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Tim W Hayes 03/02/2007 04:02:03 PM From DB/Inbox: Tim W Hayes

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Text:

UNCLAS ANKARA 00373

SIPDIS
CX:

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PP RUEHC RUCPDOC RUEHIT RUEHDA RUEHBS
DE RUEHAK #0373/01 0521000
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FM AMEMBASSY ANKARA
TO RUEHC/SECSTATE WASHDC PRIORITY 1036
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RUEHBS/USEU BRUSSELS PRIORITY
RUEHIT/AMCONSUL ISTANBUL 2161
RUEHDA/AMCONSUL ADANA 1671

UNCLAS SECTION 01 OF 03 ANKARA 000373

SIPDIS

SENSITVIE

SIPDIS

DEPT FOR EeB A/S DSullivan
Dept for eeb/TPP/MTA/Ipe - jurban/jboger and EUR/SE
DEPT PASS USTR FOR jchoe-grOves
DEPT PASS USPTO FOR JURBAN
USDOC FOR 4200/ITA/MAC/EUR/PDYCK/CRUSNAK
usdoc for 3133/ita/usfcs/oio/ceebic/mcosta

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TAGS: [ETRD](#) [KIPR](#) [USTR](#) [TU](#)
SUBJECT: Special 301 - Recommendation to Put Turkey on Watch List
(SBU)

REFS: (A) Ankara 293, (B) Ankara 128, (C) 06 Ankara 6734, (D) 06
Ankara 6611, (E) 06 Ankara 5335, (F) 06 Ankara 1898, (G) 06 Ankara
1743, (H) 06 Ankara 1742, (I) 06 Istanbul 1449, (J) 06 Istanbul
1445, (K) Kimbrell-Choe-Groves, Boger e-mail

Summary

1. (SBU) Post recommends moving Turkey to the Special 301 Watch List in 2007 to recognize improved legislative protections for intellectual property as well as the increase in seizures and resources dedicated to capturing and sentencing IPR violators. Turkish officials provided comprehensive and frank information during the Special 301 review process (ref B). They recognize that Turkey needs to improve IPR protection and are ready to work more intensively with us and with industry to improve Turkey's capacity. U.S. agencies and industry should work together to develop training and assistance programs that would complement current EU efforts and strengthen the hand of reform-minded bureaucrats who continue to push for more improvement. As one example, we are coordinating an "Innovation Economy" conference with U.S. business representatives in Istanbul for later this year. Moving Turkey to the Watch List would also be consistent with the constructive and cooperative spirit of the revived Economic Partnership Commission and TIFA dialogues. End summary.

Protection Problems Continue, but Notable Improvements

¶2. (SBU) Turkey's protection of IPR remained problematic in 2006, especially in the areas of pharmaceutical data exclusivity (DE) and copyright enforcement. The unresolved status of marketing applications filed prior to January 1, 2005, by generic drug producers that rely on test data of the original innovative company (ref E) continues to be a major area of concern for U.S. pharmaceutical companies. In addition, while Turkish officials argue that they do not need to change their patent linkage system because the one in place provides safeguards in line with other EU countries, the implementation of a system similar to the one used in the U.S. could provide additional protection against the approval of generic copies of products for which a valid patent exists. We note, however, that only one such case has occurred in Turkey that could arguably have been avoided with such a system in place.

¶3. (SBU) Progress has been made in the area of copyright and trademark enforcement, with the number of seizures increasing substantially since the enactment of copyright and trademark protection legislation (refs B, I, J). However, the prevalence of pirated material continues to concern right holders, some of whom recently created their own grassroots organization in Turkey to educate the public and the government about the importance of protecting IPR (ref C).

¶4. (SBU) The Turkish government recognizes these weaknesses and is working to improve its IPR protection regime. During the Advance Special 301 process (ref B), Turkish ministries readily cooperated with us by providing detailed information and remained open to suggested areas for improvement. Most recently, they provided information regarding the sentencing guidelines currently used by IPR judges when penalizing offenders (ref K). These include fines of up to 110,000 euros and up to 6 years in prison for the most serious violations. In its 2007 Special 301 submission to USTR, the Turkish government provided a comprehensive, detailed, and frank description of its strengths, and more notably its weaknesses, in protecting IPR. While many shortcomings remain, the Turkish government continues its harmonization process to fulfill its requirements for EU membership. Many within the government who handle IPR argue that even if EU membership is not realized, the improvements being made in the judicial system are important for the Turkish economy because they will attract more investment and innovation which, in turn, will create better jobs for Turkey's underemployed workforce.

¶5. (SBU) The tone of the responses we receive from Turkish officials has changed considerably. In place of the refusal to admit a problem, Turkey's obligation to protect IPR is now a given for nearly all officials. We receive many requests for training and assistance, especially for Turkey's specialized IPR courts and for law enforcement officials. As an example of how eagerly Turkey takes advantage of U.S. and EU training opportunities, we have successfully nominated seven Turkish officials to attend four separate IPR protection courses offered by USPTO in 2006-2007. We appreciate the cooperation we have received from USPTO in this respect.

U.S. Industry of Two Minds

¶6. (SBU) While 2007 Special 301 submissions from industry organizations such as PhRMA and IIPA call for continued improvements, they also recognize Turkey's forward movement, both in patent protection for pharmaceutical products and copyright enforcement. PhRMA representatives in Turkey express optimism about Turkey's progress. Those who have observed this issue since the "dark days" when there was no protective legislation for patents or data tell us they are "very satisfied" with the improvements but continue to pressure the GOT (rightfully) for stronger protections. AMPEC and MUYAP representatives in Istanbul also express their support for Turkey's progress in seizures and protection of copyrighted and trademarked material while working with the government to improve implementation (refs I, J).

¶7. (SBU) As part of our Advance Special 301 discussions with Turkish officials and with private industry, we raised the issue of pirated software in government agencies and asked about the possibility of

having the current administration "reissue" the 1998 prime ministerial decree outlawing the use of pirated software in public offices. The GOT has reiterated that the decree remains binding on all government agencies, which are instructed to ensure compliance with its requirements. BSA representatives in Turkey have told us that they believe the government is acting in good faith to fix this problem and that, while anecdotally they have been told that government use of unlicensed software is at most 50%, they have no way of calculating this. In addition, a prominent BSA member, which also considers itself the "unofficial technology adviser" to the GOT, questioned the utility of such a decree and does not believe that pressuring the government to reissue an official statement with which agencies are already familiar is worth extensive effort.

¶18. (SBU) This incongruent message from U.S. industry has left Turkish officials at times frustrated and more often confused. There appears to be a disconnect between those working on the ground in Turkey and who see first-hand the improvements that have been made, and professional industry lobbyists in Washington, some of whom fail to even make the trip to Ankara to meet face-to-face with Turkish officials during their visits to Istanbul. This is something that we have urged U.S. industry representatives in Turkey to incorporate into their DC representatives' future agendas in Turkey.

Good Will is There, But Limited Resources Slow Reforms

¶19. (SBU) The Turkish government is not deficient in good intentions to improve IPR protection but rather in capacity as it struggles to reform its judicial system, educate judges and prosecutors (while continuously adding more of each to its specialized IPR courts), implementing reforms in its healthcare system (ref A), and modernizing its communications infrastructure. During our last visit to the MOH, we waited in the department where new pharmaceutical applications are processed among the shopping carts full of paper files that were awaiting review. Important steps have been made in terms of automating and linking relevant agencies in order to facilitate the share of information (ref B), but the process is not complete.

¶10. (SBU) U.S. industry and agencies should take advantage of the good will of Turkish agencies instead of rebuffing their efforts as insufficient. Such an approach would be consistent with the constructive, cooperative spirit of the revived Economic Partnership Commission (EPC) and Trade and Investment Framework Agreement (TIFA) dialogues. This message would also strengthen the hand of reformers within the GOT who see the benefits of good policy, especially as Turkey enters its election season and unpopular policies will be at greater risk of cancellation without support from within the bureaucracy.

Watch List Remains a Significant Warning

¶11. Moving Turkey to the Watch List will not let it off the hook in terms of pressure for continued reform but will recognize the considerable efforts made by reform-minded officials. Instead of continuing to penalize Turkey for its lack of perfection, U.S. agencies should work with industry to find ways to upgrade capacity, and train and educate Turkish policy makers in complement with EU twinning and training projects. We are currently working with U.S. industry representatives to organize an "Innovation Economy" conference that will stress the importance of IPR protection for attracting greenfield FDI and innovation to a developing economy. Turkey was placed on the Priority Watch List in 2004 at a time when IPR Protection was dismal and Turkish officials refused to admit that they had obligations to fulfill. The situation, as those who have been here from the beginning tell us over and over, is considerably better than it was three years ago, and the USG should recognize these efforts by moving Turkey to the Watch List.

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